

Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
[February 18, 2000]

NOTICE OF PROPOSED RULEMAKING

Review Team Composition, 2000

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following existing sections of Title 14 of the California Code of Regulations (14 CCR):

§ 1037.3	Agency and Public Review
§ 1037.5	Review Teams to Be Established
§ 1090.17	Agency and Public Review for the NTMP
§ 1092.16	PTHP Review Inspection-Filing Return
§ 1092.18	Agency and Public Review for the PTHP
§ 1092.27	Report Minor Deviations

PUBLIC HEARING

The Board will hold a public hearing starting at 1:00 P.M., on Tuesday, April 4, 2000, at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Monday, April 3, 2000. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

All written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

AUTHORITY AND REFERENCE

Public Resources Code (PRC) 4551 and 21080.5 authorizes the Board to adopt such rules and regulations as it determines are reasonable necessary to enable it to implement, interpret, or make specific sections 4512, 4513, 4551.5, 4582.6, 21000(g), 21002, and 21080.5 of the Public Resources Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the Legislature's concern throughout the State relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources provide watershed protection and fisheries maintenance. The Legislature declared that it is the policy of the State to encourage responsible forest management that considers the public's need for watershed protection and fisheries (ref. PRC section 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC section 4513). Public Resources Code Section 4551 gives the Board authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes and estuaries.

The existing Timber Harvesting Plan (THP) Review Team is composed of representatives of: Regional Water Quality Control Board, Department of Fish and Game, a representative of county government when the county government so requests, California Coastal Commission (for plans in the coastal zone), California Tahoe Regional Planning Agency (for plans in the Tahoe Basin) and the Department of Forestry and Fire Protection. The Division of Mines and Geology (DMG) is not currently a formal

member of the Review Team. Since the inception of the Z'berg-Nejedly Forest Practice Act (Act) DMG has played an important part in the review of THPs and related documents. They have provided geologic and geomorphic analysis on roads, yarding methods and other timber harvesting activities, which may result in mass wasting. This most often also results in impacts to the beneficial uses of water. Due to the importance of DMG evaluations it is important that they be made a formal member of the Review Team to provide the public assurance that such expertise is provided. This also provides DMG the ability to non-concur on THPs where its evaluation concludes that THP would have remaining significant impacts if approved by the Director.

14 CCR § 1037.3 **Agency and Public Review**

This rule requires that a copy of the THP be transmitted to the Department of Fish and Game, the Regional Water Quality Control Board, the Department of Parks and Recreation, the county planning agency, and in some instances, to the California Tahoe Regional Planning Agency and the California Coastal Commission. The Division of Mines and Geology (DMG) is not currently recognized as a member of the Review Team. Therefore, the current rules do not require that copies of THPs be sent to DMG for review.

The purpose of the change to the regulation is to require that the Director provide the DMG with a copy of any THPs received for filing. This amendment is necessary to provide DMG, as a formal member of the Review Team, adequate information for review of THPs.

Additionally, the existing rules incorrectly reference the California Coastal Commission, the California Tahoe Regional Planning Agency, and the California Code of Regulations and contain other minor grammatical errors. The grammatical changes and the changes to the references are intended to provide clarity, and consistency with other sections of the rules.

14 CCR § 1037.5 **Review Teams to Be Established**

The existing Timber Harvesting Plan (THP) Review Team is composed of representatives of the Regional Water Quality Control Board, the Department of Fish and Game, a representative of county government when the county government so requests, the California Coastal Commission (for plans in the coastal zone), the California Tahoe Regional Planning Agency and the Department of Forestry and Fire Protection. The Division of Mines and Geology (DMG) is not currently a member of the Review Team. Due to the importance of DMG evaluations, it is important that it be made a formal member of the Review Team to provide the public assurance that such expertise is provided. The rule change also provides DMG the ability to non-concur on THPs where it determines that the THP would have remaining significant impacts if approved by the Director. This amendment is necessary to establish DMG as a formal member of the THP Review Team.

Additionally, the existing rules incorrectly reference the California Coastal Commission and the California Code of Regulations, and contain other minor grammatical errors. The grammatical changes and the changes to the references are intended to provide clarity, and consistency with other sections of the rules.

14 CCR § 1090.17 Agency and Public Review for the NTMP

This rule requires that a copy of an NTMP be transmitted to the Department of Fish and Game, the Regional Water Quality Control Board, the Department of Parks and Recreation, the county planning agency, the California Coastal Commission, and other appropriate agencies. The Division of Mines and Geology (DMG) is not currently a member of the Review Team. Therefore, the current rules do not require that copies of NTMPs be sent to DMG for review. Currently, DMG plays an important part in the review of NTMPs. It has provided professional analysis of roads, yarding methods and other timber harvesting activities, which may result in mass wasting. However, the current rules do not require that DMG be provided with the appropriate documents to facilitate this review. The purpose of the regulation is to require that the Director provide the DMG with a copy of any Nonindustrial Timber Management Plans received for filing.

Additionally, the existing rules incorrectly reference the California Coastal Commission, do not reference the California Tahoe Regional Planning Agency, and contain other minor grammatical errors. The grammatical changes and the changes to the references are intended to provide clarity, and consistency with other sections of the rules.

14 CCR § 1092.16 PTHP Review Inspection-Filing Return

The existing Forest Practice Rules require that the Department notify the plan submitter, the Department of Fish and Game, and the Regional Water Quality Control Board if a preharvest inspection is necessary as part of the review of a Program Timber Harvesting Plan (PTHP). The Division of Mines and Geology (DMG) is not currently recognized as a formal member of the PTHP Review Team. Therefore, the current rules do not require that DMG be notified of the necessity for a preharvest inspection. Currently, DMG plays an important part in the review of PTHPs. It has provided analysis on roads, yarding methods and other timber harvesting activities, which may result in mass wasting. However, the current rules do not require that DMG be provided with the appropriate information regarding the need for a field review of the plans, which would facilitate overall adequate review of PTHPs. The purpose of the regulation is to provide DMG adequate notice of the need for a preharvest inspection as a formal member of the PTHP Review Team. This provides further public confidence that the potential for the water quality impacts of mass wasting is being addressed with the proper expertise.

Additionally, the existing rules incorrectly reference PRC § 4582.7 and contain other minor grammatical errors. The grammatical changes and the changes to the reference are intended to provide clarity, and consistency with other sections of the rules.

14 CCR § 1092.18 Agency and Public Review for the PTHP

This rule requires that a copy of a PTHP be transmitted to the Department of Fish and Game, the Regional Water Quality Control Board, the Department of Parks and Recreation, the county planning agency, the California Tahoe Regional Planning Agency, and the California Coastal Commission. The Division of Mines and Geology (DMG) is not currently recognized as a member of the PTHP Review Team. Therefore, the current rules do not require that copies of PTHPs be sent to that agency for review. Currently, DMG plays an important part in the review of PTHPs. It has provided analysis of roads, yarding methods and other timber harvesting activities, which may result in mass wasting. However, the current rules do not require that DMG be provided with the appropriate documents to facilitate this review. The purpose of the regulation is to specifically require that the Director provide the DMG with a copy of any Program Timber Harvesting Plans received for filing. This is intended to provide further public confidence that the potential for the water quality impacts often associated with mass wasting and other geologic events is being addressed with the proper expertise.

Additionally, the existing rules incorrectly reference the California Coastal Commission and utilize an abbreviation for the Department of Fish and Game. This language is not consistent with other sections of the rules. The grammatical changes and the changes to the reference are intended to provide clarity, and consistency with other sections of the rules.

14 CCR § 1092.27 Report Minor Deviations

The existing Forest Practice Rules allow the Director five (5) working days to determine if a proposed change from the requirements of a plan is to be considered minor or major. To help in this determination, the Department uses information from the other reviewing agencies. In order for these agencies to provide input to the Director prior to this determination, the Director is required to send copies of the proposed change to the Department of Fish and Game, the Regional Water Quality Control Board, and any county that has adopted special rules. The Division of Mines and Geology (DMG) is not currently a member of the Review Team. Therefore, the Director is not currently required to provide the DMG with copies of any proposed change to a plan. The DMG has played an important part in the review of PTHPs. It has provided analysis of roads, yarding methods and other timber harvesting activities, which may result in mass wasting and may also result in impacts to the beneficial uses of water. Due to the importance of DMG evaluations, it is important that DMG be provided adequate information about changes proposed to any Program Timber Harvesting Plan. This also provides DMG the ability to determine if changes would have remaining significant impacts if approved by the Director. The purpose of the regulation is to specifically require that the Director provide the DMG with a copy of any proposed change to a Program Timber Harvesting Plan upon receipt. This is intended to provide further public confidence that the potential

for the water quality impacts often associated with mass wasting and other geologic events is being addressed with the proper expertise.

Additionally, the existing rules contain a minor grammatical error. The grammatical change is intended to provide clarity, and consistency with other sections of the rules.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: None
- Potential cost impact on private persons or directly affected businesses: None
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

PLAIN ENGLISH DETERMINATION AND OVERVIEW

Small Business Determination

The Board has determined that the proposed regulations do not affect small businesses.

Plain English Policy Overview

The Z'berg-Nejedly Forest Practice Act of 1973 established the Legislature's intent to consider the public's need for long-term watershed protection, fisheries and wildlife. It directed the State Board of Forestry and Fire Protection to adopt rules to control unreasonable effects on the beneficial uses of the State's waters.

The rule amendments will establish the Division of Mines and Geology (DMG) as a formal member of the Timber Harvesting Plan (THP) Review Team. This formally requires that the Department notify DMG of certain events associated with various harvesting plans. The rule change would also require the Department to provide DMG with copies of harvesting plans, and changes to plans, for review and comment. This provides further public confidence that the potential for the water quality impacts by mass wasting is being addressed with the proper expertise. This will also be assured, as DMG will gain authority for the filing of a non-concurrence where its evaluation concludes that significant adverse impacts will remain if the Director approves a plan.

Availability of the Text in Plain English

According to Government Code section 11346.2, (a)(1) an agency that adopts a regulation that affects small businesses must draft the regulation in plain English as defined in 11342(e). Although the Board has determined that the proposed changes to the regulations do not affect small businesses, the Board has attempted to draft the regulations in plain English whenever possible, and non-familiar language is defined within the regulations. However, the Board has determined that it is not feasible to fully draft the regulations in plain English due to the technical nature of the regulations. Therefore, a non-controlling plain English summary is available from the agency contact person named in the notice.

To facilitate review, and provide for meaningful public participation in the rulemaking process, the Informative Digest/Plain English Overview for this notice and any future notices pertaining to the rule section changes referenced in this notice shall constitute the non-controlling plain English summary of the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(12), the Board must determine that no alternative it considers would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed changes to the regulations at the scheduled hearing, or during the written comment period. Submissions may include the following considerations: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses, (ii) Consolidation or simplification of compliance and reporting requirements for businesses, (iii) The use of performance standards rather than prescriptive standards, or (iv) Exemption or partial exemption from regulatory requirements for businesses.

CONTACT PERSON

Questions about the proposed action, or requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, and modified text of the regulations; may be directed to:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418 or,
(916) 653-8007

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared a *Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

A copy of the express terms of the proposed action uses UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. As of this date, this notice is published in the *Notice Register*.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Dennis O. Hall
Regulations Coordinator
Board of Forestry and Fire Protection

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File: 2000 RT composition\45 Day Notice